

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIACase No. _____
(CLERK'S OFFICE USE ONLY)

FAIRFAX

Circuit Court

AMERICAN EXPRESS CENTURION BANK

v In re: JAMES WHITTAKER

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- | | | |
|--|--|--|
| <input type="checkbox"/> Accounting | <input type="checkbox"/> Construe Will | <input type="checkbox"/> Landlord/Tenant |
| <input type="checkbox"/> Administrative Appeal | <input type="checkbox"/> Contract Action | <input type="checkbox"/> Mechanics Lien |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Contract Specific Performance | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Adoption - Foreign | <input type="checkbox"/> Correct/Erroneous State/Local Taxes | <input type="checkbox"/> Motor Vehicle Tort |
| <input type="checkbox"/> Adult Protection | <input type="checkbox"/> Counterclaim | <input type="checkbox"/> Name Change |
| <input type="checkbox"/> Aid and Guidance | <input type="checkbox"/> Cross Claim | <input type="checkbox"/> Order to Sever |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Custody/Visitation/Support/Equitable Distribution | <input type="checkbox"/> Partition |
| <input type="checkbox"/> Annulment | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Petition |
| <input type="checkbox"/> Appeal Decision of ABC Board | <input type="checkbox"/> Declare Death | <input type="checkbox"/> Product Liability |
| <input type="checkbox"/> Appeal Decision of Board of Zoning | <input type="checkbox"/> Delinquent Taxes | <input type="checkbox"/> Quiet Title |
| <input type="checkbox"/> Appeal Decision of Comp Board | <input type="checkbox"/> Detinue | <input type="checkbox"/> Referendum Elections |
| <input type="checkbox"/> Appeal Decision of Employment Commission | <input type="checkbox"/> Divorce | <input type="checkbox"/> Reformation of Trust |
| <input type="checkbox"/> Appeal Decision of Local Government | <input type="checkbox"/> Ejectment | <input type="checkbox"/> Reinstatement of Driving Privileges |
| <input type="checkbox"/> Appeal Decision of Marine Resources Commission | <input type="checkbox"/> Encumber/Sell Real Estate | <input type="checkbox"/> Reinstatement (General) |
| <input type="checkbox"/> Appeal Decision of Voter Registration | <input type="checkbox"/> Enforce Vendor's Lien | <input type="checkbox"/> Removal |
| <input type="checkbox"/> Appointment of Church Trustee, Substitute Fiduciaries | <input type="checkbox"/> Escheat | <input type="checkbox"/> Separate Maintenance |
| <input type="checkbox"/> Approval of Right to be Eligible to Vote | <input type="checkbox"/> Establish Boundaries | <input type="checkbox"/> Standby Guardian/Conservator |
| <input type="checkbox"/> Asbestos Litigation | <input type="checkbox"/> Expunge | <input type="checkbox"/> Termination of Mineral Rights |
| <input type="checkbox"/> Attachment | <input type="checkbox"/> Forfeiture of U.S. Currency | <input type="checkbox"/> Unlawful Detainer |
| <input type="checkbox"/> Bond Forfeiture Appeal | <input type="checkbox"/> Freedom of Information | <input type="checkbox"/> Vehicle Confiscation |
| <input type="checkbox"/> Child Abuse and Neglect - Unfounded Complaint | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Will Contested |
| <input type="checkbox"/> Civil Contempt | <input type="checkbox"/> General Tort Liability (other than motor vehicle) | <input type="checkbox"/> Writ of Certiorari |
| <input type="checkbox"/> Claim Impleading Third Party Defendant | <input type="checkbox"/> Grievance Procedures | <input type="checkbox"/> Writ of Habeas Corpus |
| <input checked="" type="checkbox"/> Complaint - (Miscellaneous) | <input type="checkbox"/> Guardian/Conservator Appointment | <input type="checkbox"/> Writ of Mandamus |
| <input type="checkbox"/> Compromise Settlement | <input type="checkbox"/> Impress/Declare a Trust | <input type="checkbox"/> Writ of Prohibition |
| <input type="checkbox"/> Condemnation | <input type="checkbox"/> Injunction | <input type="checkbox"/> Writ of Quo Warranto |
| <input type="checkbox"/> Confessed Judgment | <input type="checkbox"/> Interdiction | <input type="checkbox"/> Wrongful Death |
| <input type="checkbox"/> Conservator of Peace | <input type="checkbox"/> Interrogatory | <input type="checkbox"/> Other |
| | <input type="checkbox"/> Intentional Tort | |
| | <input type="checkbox"/> Judgment Lien-Bill to Enforce | |
| | <input type="checkbox"/> Judicial Review | |

☒ Damages in the amount of \$ 56,984.98 are claimed.

DATE

☐ PLAINTIFF☐ DEFENDANT☒ ATTORNEY FOR ☒ PLAINTIFF☐ DEFENDANT

Andrew S. Lerner VSB 66235

PRINT NAME

Zwicker & Associates P.C. 401 Professional Drive, Suite 150 Gaithersburg, MD 20879 301-355-7400

ADDRESS / TELEPHONE NUMBER OF SIGNATOR

* See reverse side for Civil Action Type Codes
- for Clerk's Office Use Only

EXHIBIT

4

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX

AMERICAN EXPRESS CENTURION BANK
c/o 80 Minuteman Road
Andover, MA 01810

Plaintiff

V.

Docket No.

JAMES WHITTAKER
13233 MIDDLETON FARM LN
OAK HILL, VA 20171

Defendant

COMPLAINT

1. Plaintiff is authorized to conduct business in the Commonwealth of Virginia.
2. Defendant, JAMES WHITTAKER is a resident of the above-referenced residence located in the Commonwealth of Virginia.
3. Defendant, at his/her request, entered into a credit card agreement with plaintiff or its predecessor in interest for the issuance and use of a line of credit ("credit card" or "account") Monthly payments were to be made to Plaintiff by Defendant pursuant to the terms of the agreement between the parties.

COUNT ONE

Breach of Contract

4. That Paragraphs One (1) through Three (3) are incorporated by reference as if fully repeated herein.
5. As a result of the credit agreement executed between the parties, credit has been given by plaintiff or its predecessor in interest on an open account to defendant.
6. The terms of the credit card agreement provide for the repayment of all money loaned over a designated period of time. Defendant has failed to repay the money loaned within the limits imposed by the credit card terms.
7. All money loaned is now past due, and has not been paid by Defendant despite numerous demands for payment by Plaintiff. The sum of \$56,984.98 remains outstanding. Said sum is now past due and owing.
8. That the cardmember agreement between the parties calls for the payment by the Defendant of reasonable attorney's fees associated with this collection action. The undersigned counsel is not a paid employee of the Plaintiff.
9. That the Plaintiff owns the account described herein.

COUNT TWO

UNJUST ENRICHMENT

10. That Paragraphs One (1) through Nine (9) are incorporated by reference as if fully repeated herein.

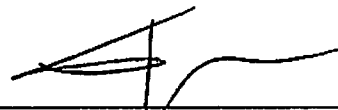
11. That the Plaintiff or its predecessor in interest extended credit to the Defendant and the Defendant received a financial benefit as a result of said credit in the amount of \$56,984.98.
12. That said financial benefit enriched the Defendant and the Defendant has failed to repay said sum to the Plaintiff despite repeated demands.
13. That it is unjust that the Defendant utilized said extension of credit without repaying said monies to the Plaintiff. That the Plaintiff or its predecessor in interest made payment to third parties on said line of credit on the Defendant's behalf with the reasonable expectation that Defendant would repay said money to the Plaintiff.

WHEREFORE, the above premises considered, Plaintiff demands judgment against defendant, JAMES WHITTAKER, in the principal amount of \$56,984.98, prejudgment interest, reasonable attorney's fees, costs of this action, and post-judgment interest at the legal rate.

Respectfully submitted,

ZWICKER & ASSOCIATES, P.C.

By:



Andrew S. Lerner, Esq.
VSB Number 66235
401 Professional Drive, Suite 150
Gaithersburg, MD 20879
(301) 355-7400
alerner@zwickerpc.com
Attorney for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX

AMERICAN EXPRESS CENTURION BANK
Plaintiff

V.

Docket No.

JAMES WHITTAKER
Defendant

AFFIDAVIT OF DEBT IN SUPPORT OF JUDGMENT PURSUANT TO VA CODE §8.01-28

I AM THE Director for the Plaintiff, herein, and I am a custodian
(print title)

of records for the Plaintiff in this matter. The Plaintiff has kept business records concerning this account in the ordinary course of its business, and the data contained in the records is contemporaneously recorded. After reviewing the Plaintiff's records concerning JAMES WHITTAKER, I can testify as follows as being true and accurate:

That at the Defendant's request, the Plaintiff extended credit to the Defendant on an open, unsecured account ("credit card") noted as AMERICAN EXPRESS CENTURION BANK account number . That the Defendant agreed to repay the sum(s) back to the Plaintiff, with interest and additional charges as may be applicable.

That as of the date of this Affidavit, this account remains unpaid and the amount due is \$56,984.98.

That the Defendant is not now in the military service, as defined in the Servicemembers Civil Relief Act (2003), nor has the Defendant been in such service within thirty (30) days hereof.

I do solemnly declare and affirm under the penalties of perjury that the contents of this Affidavit herein are true and I am competent to testify to these matters.

By:


AMERICAN EXPRESS CENTURION BANK

[Signature]
(signature)

12/2/08
(date)

John M. Clements
(print name)

SUBSCRIBED AND SWORN to me before this 2nd day of December, 2008

 William M. O'Connell
Notary Public
My Commission Expires June 29, 2012

William M. O'Connell
Notary Public

R0130-1	08:51:10	RECOVERY MANAGEMENT SYSTEM	TD00GLS	11/20/08
ACTIVE		View Account	Birthdate....:	
Acct....:			Status.....:	501
SOCIAL : 3780	Gtr: Y	DO NOT CONTACT	Product Type..:	A64L
Name...: WHITTAKER, JAMES			Officer.....:	1R0LL3
Name 2..:			Recoverer.....:	3032
Address: 13233 MIDDLETON FARM LN			Agency/Atty..:	2AVA
Address:			Interest %....:	.00
City....: OAK HILL	VA 20171		Chrg Off Date:	10/17/08
Ph(Ho)..: 7031234567	Ph(Off):		Received.....:	11/06/08
Contact Frequency:	Income %...: 5.88		Assigned.....:	11/19/08
Payment Frequency:	Commission%		Contract Date:	0/00/00
	Original	Judgment	Last Contact..:	10/15/08
Charge-Off Amt...:	56,984.98		Next Contact..:	0/00/00
Recovered Princ.:			Last Payment..:	0/00/00
Net Charge Off...:	56,984.98		Payment Due...:	0/00/00
Associated Costs:			Judgment Date:	0/00/00
Recovered Costs..:			Dead Transfer:	0/00/00
Accrued Interest:			Payment.:	
Recovered Int....:			Past Due:	
Account Balance..:	56,984.98			
F3 Go Back	F13 Debtor Summary			

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX

AMERICAN EXPRESS CENTURION BANK
c/o 80 Minuteman Road
Andover, MA 01810

Plaintiff

V.

Docket No.

JAMES WHITTAKER
13233 MIDDLETON FARM LN
OAK HILL, VA 20171

Defendant

PLAINTIFF'S COMBINED DISCOVERY REQUESTS TO DEFENDANT

TO: **JAMES WHITTAKER**
13233 MIDDLETON FARM LN
OAK HILL, VA 20171

You are directed to answer the following interrogatories, requests for production of documents, and to respond to the requests for admission of facts within 28 days after service of these materials, pursuant to Virginia Rule 4:8(d), Virginia Rule 4:9(b), and Virginia Rule 4:11(a), respectively.

(a) These discovery materials are continuing in character, so as to require you to file supplementary answers if you obtain further or different information before trial.

(b) Where the name and identity of a person is requested, please state the full name, home address, and also business address if known.

(c) Unless otherwise indicated, these interrogatories refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings.

(d) Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, his attorneys. When answer is made by a corporate defendant, state the name, address and title of the person supplying the information, and making the affidavit and the source of his information.

(e) The pronoun "you" refers to the party to whom these interrogatories are addressed, and the persons in clause (d).

(f) The term "account" references the account at issue in this lawsuit and specifically, refers to the account between AMERICAN EXPRESS CENTURION BANK and JAMES WHITTAKER and noted as account number 3715-401519-07009.

1. Have you ever made an application for an extension of credit or otherwise transacted business with the Plaintiff? If so, give the date(s) you applied for such credit, and the details thereof.
2. Did you receive monthly statements of account on account of business you transacted with the Plaintiff? If so, provide copies of all such monthly statements concerning this account.
3. Are the statements attached to Plaintiff's Complaint factually correct? If your answer is in the negative, state all facts and circumstances supporting such contention.
4. Was any complaint ever made prior to the filing of this suit regarding the balance shown as due on Plaintiff's Complaint? If so, state the date(s) thereof, to whom the complaint was made and the details of the complaint. Provide any correspondence you wrote to the Plaintiff concerning these complaints and/or errors, and the Plaintiff's response thereto.
5. According to your records, what balance is due and owing from you to the Plaintiff? State how you calculate this balance and provide any documentation, statements or accounting in support of this balance.
6. Did you make any payments to the Plaintiff not reflected on Plaintiff's Complaint? If so, state the date of payment, amount and manner of payment. Provide a copy of all such payments.
7. Are you entitled to any credit other than those, if any, reflected on Plaintiff's statement of account? If so, state what credit(s) you are entitled to and why you believe you are entitled to such credits.
8. State with particularity what facts, documents and/or other evidence you intend to rely upon to support your contention that you are not indebted to the Plaintiff as alleged in the Complaint.
9. Provide copies of all correspondence concerning your AMERICAN EXPRESS CENTURION BANK account during the life of said account. This includes, but is not limited to, correspondence (to or from the Plaintiff), monthly statements, dispute letters, cardmember agreements, etc.

REQUESTS FOR ADMISSION OF FACTS

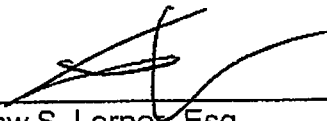
1. The Defendant, JAMES WHITTAKER admits that he/she applied for a revolving line of credit ("credit card") with AMERICAN EXPRESS CENTURION BANK.
2. That the Defendant, JAMES WHITTAKER admits that he/she utilized the credit card account to make purchases.

3. That the Defendant, JAMES WHITTAKER admits that he/she received monthly statements from AMERICAN EXPRESS CENTURION BANK at the address JAMES WHITTAKER provided to AMERICAN EXPRESS CENTURION BANK.
4. That the Defendant, JAMES WHITTAKER admits that the monthly statements she/he received reflected the activity on the account for the prior month.
5. That the Defendant, JAMES WHITTAKER admits that if the monthly balance wasn't paid in full, interest was properly due on the account and owed to AMERICAN EXPRESS CENTURION BANK.
6. That the Defendant, JAMES WHITTAKER admits that if payment wasn't paid when due, a late charge was due on the account.
7. That the Defendant, JAMES WHITTAKER admits that all payments he/she made on the account have been properly credited to the account with AMERICAN EXPRESS CENTURION BANK.
8. That the Defendant, JAMES WHITTAKER admits that he/she owes AMERICAN EXPRESS CENTURION BANK the amount of \$56,984.98.

Respectfully submitted,

ZWICKER & ASSOCIATES, P.C.

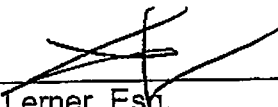
By:



Andrew S. Lerner, Esq.
VSB Number 66235
401 Professional Drive, Suite 150
Gaithersburg, MD 20879
(301) 355-7400
alerner@zwickerpc.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2008, I served via first class mail, postage prepaid, a copy of the Summons, Complaint and all supporting documentation thereto as well as the Plaintiff's Combined Discovery Requests including Plaintiff's Interrogatories, Requests for Production of Documents, and Requests for Admission of Facts to JAMES WHITTAKER, 13233 MIDDLETON FARM LN, OAK HILL, VA 20171.



Andrew S. Lerner, Esq.